

House File 205 - Introduced

HOUSE FILE 205

BY HUNTER

A BILL FOR

1 An Act relating to open records and public meetings, including
2 the creation of the Iowa public information board.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 8A.341, subsection 2, Code 2011, is
2 amended to read as follows:

3 2. If money is appropriated for this purpose, by November 1
4 of each year supply a report which contains the name, gender,
5 county, or city of residence when possible, official title,
6 salary received during the previous fiscal year, base salary as
7 computed on July 1 of the current fiscal year, and traveling
8 and subsistence expense of the personnel of each of the
9 departments, boards, and commissions of the state government
10 except personnel who receive an annual salary of less than one
11 thousand dollars. The number of the personnel and the total
12 amount received by them shall be shown for each department in
13 the report. All employees who have drawn salaries, fees, or
14 expense allowances from more than one department or subdivision
15 shall be listed separately under the proper departmental
16 heading. On the request of the director, the head of each
17 department, board, or commission shall furnish the data
18 covering that agency. The report shall be distributed upon
19 request without charge in an electronic medium to each caucus
20 of the general assembly, the legislative services agency, the
21 chief clerk of the house of representatives, and the secretary
22 of the senate. Copies of the report shall be made available to
23 other persons in an electronic medium upon payment of a fee,
24 which shall not exceed the cost of providing the copy of the
25 report. Sections 22.2 through ~~22.6~~ 22.5 apply to the report.
26 All funds from the sale of the report shall be deposited in the
27 printing revolving fund established in section 8A.345.

28 Sec. 2. Section 8E.202, subsection 1, unnumbered paragraph
29 1, Code 2011, is amended to read as follows:

30 The department and each agency shall provide for the widest
31 possible dissemination of information between agencies and the
32 public relating to the enterprise strategic plan and agency
33 strategic plans, including but not limited to internet access.
34 This section does not require the department or an agency to
35 release information which is classified as a confidential

1 record under this Code, ~~including but not limited to section~~
2 ~~22.7.~~

3 Sec. 3. Section 8E.202, subsection 3, Code 2011, is amended
4 to read as follows:

5 3. A record which is confidential under this Code, ~~including~~
6 ~~but not limited to section 22.7,~~ shall not be released to the
7 public under this section.

8 Sec. 4. Section 21.4, subsections 1 and 3, Code 2011, are
9 amended to read as follows:

10 1. A Except as provided in subsection 3, a governmental
11 body, except township trustees, shall give notice of the time,
12 date, and place of each meeting including a reconvened meeting
13 of the governmental body, and its the tentative agenda of the
14 meeting, in a manner reasonably calculated to apprise the
15 public of that information. Reasonable notice shall include
16 advising the news media who have filed a request for notice
17 with the governmental body and posting the notice on a bulletin
18 board or other prominent place which is easily accessible to
19 the public and clearly designated for that purpose at the
20 principal office of the body holding the meeting, or if no such
21 office exists, at the building in which the meeting is to be
22 held.

23 3. Subsection 1 does not apply to any of the following:

24 a. A meeting reconvened within four hours of the start of
25 its recess, where an announcement of the time, date, and place
26 of the reconvened meeting is made at the original meeting in
27 open session and recorded in the minutes of the meeting and
28 there is no change in the agenda.

29 b. A meeting held by a formally constituted subunit of a
30 parent governmental body may conduct a meeting without notice
31 as required by this section during a lawful meeting of the
32 parent governmental body, or during a recess in that meeting
33 of up to four hours, or a meeting of that subunit immediately
34 following that the meeting of the parent governmental body, if
35 the meeting of the that subunit is publicly announced in open

1 session at the parent meeting and the subject of the meeting
2 reasonably coincides with the subjects discussed or acted upon
3 by the parent governmental body.

4 Sec. 5. Section 21.5, subsection 1, paragraph j, Code 2011,
5 is amended to read as follows:

6 *j.* To discuss the purchase of particular real estate only
7 where premature disclosure could be reasonably expected to
8 increase the price the governmental body would have to pay for
9 that property. The minutes and the ~~tape~~ audio recording of
10 a session closed under this paragraph shall be available for
11 public examination when the transaction discussed is completed.

12 Sec. 6. Section 21.5, subsection 4, Code 2011, is amended
13 to read as follows:

14 4. A governmental body shall keep detailed minutes of all
15 discussion, persons present, and action occurring at a closed
16 session, and shall also ~~tape~~ audio record all of the closed
17 session. The detailed minutes and ~~tape~~ audio recording of a
18 closed session shall be sealed and shall not be public records
19 open to public inspection. However, upon order of the court
20 in an action to enforce this chapter, the detailed minutes
21 and ~~tape~~ audio recording shall be unsealed and examined by
22 the court in camera. The court shall then determine what
23 part, if any, of the minutes should be disclosed to the
24 party seeking enforcement of this chapter for use in that
25 enforcement proceeding. In determining whether any portion of
26 the minutes or recording shall be disclosed to such a party for
27 this purpose, the court shall weigh the prejudicial effects
28 to the public interest of the disclosure of any portion of
29 the minutes or recording in question, against its probative
30 value as evidence in an enforcement proceeding. After such a
31 determination, the court may permit inspection and use of all
32 or portions of the detailed minutes and ~~tape~~ audio recording by
33 the party seeking enforcement of this chapter. A governmental
34 body shall keep the detailed minutes and ~~tape~~ audio recording
35 of any closed session for a period of at least one year from the

1 date of that meeting, except as otherwise required by law.

2 Sec. 7. Section 21.6, subsection 3, paragraph a, Code 2011,
3 is amended to read as follows:

4 a. Shall assess each member of the governmental body who
5 participated in its violation damages in the amount of not more
6 than five hundred dollars ~~nor~~ and not less than one hundred
7 dollars. However, if a member of a governmental body knowingly
8 participated in such a violation, damages shall be in the
9 amount of not more than two thousand five hundred dollars
10 and not less than one thousand dollars. These damages shall
11 be paid by the court imposing it to the state of Iowa, if
12 the body in question is a state governmental body, or to the
13 local government involved if the body in question is a local
14 governmental body. A member of a governmental body found to
15 have violated this chapter shall not be assessed such damages
16 if that member proves that the member did any of the following:

17 (1) Voted against the closed session.

18 (2) Had good reason to believe and in good faith believed
19 facts which, if true, would have indicated compliance with all
20 the requirements of this chapter.

21 (3) Reasonably relied upon a decision of a court, ~~or~~ a
22 formal opinion of the Iowa public information board, the
23 attorney general, or the attorney for the governmental body,
24 given in writing, or as memorialized in the minutes of the
25 meeting at which a formal oral opinion was given, or an
26 advisory opinion of the Iowa public information board, the
27 attorney general, or the attorney for the governmental body,
28 given in writing.

29 Sec. 8. Section 21.6, subsection 3, paragraph d, Code 2011,
30 is amended to read as follows:

31 d. Shall issue an order removing a member of a governmental
32 body from office if that member has engaged in a prior
33 violation of this chapter for which damages were assessed
34 against the member during the member's term. In making this
35 determination, the court shall recognize violations for which

1 damages were assessed by the Iowa public information board
2 created in section 23.3.

3 Sec. 9. NEW SECTION. **22.01 Purpose.**

4 The purpose of this chapter is to provide as much
5 transparency in government operations as possible consistent
6 with the need to avoid undue invasions of personal privacy and
7 the need to avoid significant interference with the achievement
8 of other important and legitimate state objectives.

9 Sec. 10. NEW SECTION. **22.2A Record requests — time**
10 **limits.**

11 1. Upon receipt of an oral or written request to examine or
12 copy a public record, the lawful custodian shall, if feasible
13 in the ordinary course of business, permit such examination
14 or copying at the time of the request. If it is not feasible
15 in the ordinary course of business to permit examination or
16 copying of the public record at the time of the request,
17 the lawful custodian shall immediately notify the requester,
18 orally or in writing, when such examination or copying may take
19 place, which shall be no later than five business days from
20 the time of the request unless there is good cause for further
21 delay. If further delay is necessary because of good cause
22 in responding to a request to examine or copy a record the
23 lawful custodian knows is a public record, the lawful custodian
24 shall provide the requester with a written statement detailing
25 the reason or reasons for the delay and the date by which the
26 request will be satisfied.

27 2. If the lawful custodian is in doubt as to whether the
28 record requested is a public record or whether the requester
29 should be permitted to examine or copy a public record
30 specified in section 22.7, the lawful custodian shall make
31 that determination within ten business days from the date of
32 the request unless further delay is necessary because of a
33 pending request by the lawful custodian to the Iowa public
34 information board for an opinion regarding the status of the
35 record requested, or other good cause, which is communicated

1 in writing to the requester. Examination or copying of the
2 government record shall be allowed within five business days
3 from the date the lawful custodian makes the determination
4 in such circumstances to permit examination or copying of
5 the record unless there is good cause for further delay in
6 fulfilling the request as provided in subsection 1.

7 3. If the lawful custodian denies a request to examine or
8 copy a public record, the custodian must provide the requester
9 at the time of the denial a written statement denying the
10 request and detailing the specific reason or reasons for the
11 denial.

12 4. If the lawful custodian does not fulfill a request to
13 examine or copy a public record within the times prescribed
14 in this section, the request shall be deemed denied and the
15 requester shall be entitled to file a complaint with the Iowa
16 public information board pursuant to section 23.7 or file a
17 lawsuit against the lawful custodian pursuant to section 22.10.

18 Sec. 11. Section 22.7, subsection 7, Code 2011, is amended
19 to read as follows:

20 7. Appraisals or appraisal information concerning the
21 purchase of real or personal property for public purposes,
22 prior to ~~public announcement of a project~~ the submission of the
23 appraisal to the property owner or other interest holders as
24 provided in section 6B.45.

25 Sec. 12. Section 22.7, subsection 10, Code 2011, is amended
26 by striking the subsection.

27 Sec. 13. Section 22.7, subsection 11, Code 2011, is amended
28 to read as follows:

29 11. a. Personal information in confidential personnel
30 records of public government bodies including but not limited
31 to cities, boards of supervisors and school districts. relating
32 to identified or identifiable individuals who are officials,
33 officers, or employees of the government bodies. However, the
34 following information relating to such individuals contained in
35 personnel records shall be public records:

1 (1) The name and compensation of the individual including
2 any written agreement establishing compensation or any other
3 terms of employment excluding any information otherwise
4 excludable from public information pursuant to this section or
5 any other applicable provision of law. For purposes of this
6 subparagraph, "compensation" means payment of, or agreement
7 to pay, any money, thing of value, or financial benefit
8 conferred in return for labor or services rendered by an
9 officer, employee, or other person plus the value of benefits
10 including but not limited to casualty, disability, life, or
11 health insurance; other health or wellness benefits; vacation,
12 holiday, and sick leave; severance payments; retirement
13 benefits; and deferred compensation.

14 (2) The date the individual was employed by the government
15 body.

16 (3) The positions the individual holds or has held with the
17 government body.

18 (4) The educational institutions attended by the
19 individual, including any diplomas and degrees earned, and
20 the names of the individual's previous employers, positions
21 previously held, and dates of previous employment.

22 (5) Any final disciplinary action taken against the
23 individual that resulted in the individual's discharge.

24 b. Personal information in confidential personnel records of
25 government bodies relating to student employees shall only be
26 released pursuant to 20 U.S.C. § 1232g.

27 Sec. 14. Section 22.7, subsection 18, Code 2011, is amended
28 to read as follows:

29 18. a. Communications not required by law, rule, procedure,
30 or contract that are made to a government body or to any of its
31 employees by identified persons outside of government, to the
32 extent that the government body receiving those communications
33 from such persons outside of government could reasonably
34 believe that those persons would be discouraged from making
35 them to that government body if they were available for general

1 public examination. As used in this subsection, "*persons*
 2 *outside of government*" does not include persons or employees
 3 of persons who are communicating with respect to a consulting
 4 or contractual relationship with a government body or who are
 5 communicating with a government body with whom an arrangement
 6 for compensation exists. Notwithstanding this provision:

7 ~~a.~~ (1) The communication is a public record to the extent
 8 that the person outside of government making that communication
 9 consents to its treatment as a public record.

10 ~~b.~~ (2) Information contained in the communication is a
 11 public record to the extent that it can be disclosed without
 12 directly or indirectly indicating the identity of the person
 13 outside of government making it or enabling others to ascertain
 14 the identity of that person.

15 ~~c.~~ (3) Information contained in the communication is a
 16 public record to the extent that it indicates the date, time,
 17 specific location, and immediate facts and circumstances
 18 surrounding the occurrence of a crime or other illegal act,
 19 except to the extent that its disclosure would plainly and
 20 seriously jeopardize a continuing investigation or pose a
 21 clear and present danger to the safety of any person. In any
 22 action challenging the failure of the lawful custodian to
 23 disclose any particular information of the kind enumerated in
 24 this paragraph, the burden of proof is on the lawful custodian
 25 to demonstrate that the disclosure of that information would
 26 jeopardize such an investigation or would pose such a clear and
 27 present danger.

28 b. This subsection does not apply to information relating to
 29 applications to a government body for employment.

30 Sec. 15. Section 22.7, subsections 40, 43, and 48, Code
 31 2011, are amended to read as follows:

32 40. The portion of a record request that contains an
 33 internet protocol number ~~which identifies the computer from~~
 34 ~~which a person requests a record, whether the person using~~
 35 ~~such computer makes the request through the IowaAccess network~~

1 ~~or directly to a lawful custodian. However, such record may~~
2 ~~be released with the express written consent of the person~~
3 ~~requesting the record.~~

4 43. Information obtained by the commissioner of insurance
5 pursuant to section 502.607, subsection 2.

6 48. Sex offender registry records under chapter 692A,
7 except shall only be released as provided in section 692A.121.

8 Sec. 16. Section 22.7, subsection 52, paragraphs a and c,
9 Code 2011, are amended to read as follows:

10 a. The following records relating to a charitable donation
11 ~~made to a foundation acting solely for the support of an~~
12 ~~institution governed by the state board of regents, to a~~
13 ~~foundation acting solely for the support of an institution~~
14 ~~governed by chapter 260C, to a private foundation as defined~~
15 ~~in section 509 of the Internal Revenue Code organized for the~~
16 ~~support of a government body, or to an endow Iowa qualified~~
17 ~~community foundation, as defined in section 15E.303, organized~~
18 ~~for the support of a government body:~~

19 (1) Portions of records that disclose a donor's or
20 prospective donor's personal, financial, estate planning, or
21 gift planning matters.

22 (2) Records received from a donor or prospective donor
23 regarding such donor's prospective gift or pledge.

24 (3) Records containing information about a donor or a
25 prospective donor in regard to the appropriateness of the
26 solicitation and dollar amount of the gift or pledge.

27 (4) Portions of records that identify a prospective donor
28 and that provide information on the appropriateness of the
29 solicitation, the form of the gift or dollar amount requested
30 by the solicitor, and the name of the solicitor.

31 (5) Portions of records disclosing the identity of a donor
32 or prospective donor, including the specific form of gift
33 or pledge that could identify a donor or prospective donor,
34 directly or indirectly, when such donor has requested anonymity
35 in connection with the gift or pledge. This subparagraph does

1 not apply to a gift or pledge from a publicly held business
2 corporation.

3 *c.* Except as provided in paragraphs “*a*” and “*b*”, portions
4 of records relating to the receipt, holding, and disbursement
5 of gifts made for the benefit of regents institutions and
6 made through foundations established for support of regents
7 institutions, including but not limited to written fund-raising
8 policies and documents evidencing fund-raising practices, shall
9 be subject to this chapter. Unless otherwise provided, the
10 lawful custodian of all records subject to this paragraph is
11 the regents institution to be benefited by such gifts.

12 Sec. 17. Section 22.7, Code 2011, is amended by adding the
13 following new subsection:

14 NEW SUBSECTION. 66. *Public employment applications.*

15 *a.* The identity and qualifications of an applicant for
16 employment by a government body if the applicant requests
17 anonymity in writing and the government body determines that
18 anonymity is necessary to induce the applicant to apply for the
19 employment position. Such information shall be exempt from
20 disclosure until an applicant is considered by the government
21 body to be a finalist for the position. For purposes of this
22 subsection, “*finalist*” means any applicant who is determined
23 to be among those who are under final consideration for
24 the position, and at least includes the five most qualified
25 applicants as determined by the recommending or selecting
26 authority. If there are five or fewer applicants for the
27 particular position, all of the applicants shall be considered
28 finalists for purposes of this subsection. The identities and
29 qualifications of the finalists shall be made available for
30 public inspection at least three business days prior to a final
31 employment decision.

32 *b.* Documents relating to a government body’s evaluation of
33 the qualifications and merits of an applicant for employment
34 by that government body.

35 Sec. 18. Section 22.10, subsection 3, paragraph b, Code

1 2011, is amended to read as follows:

2 **b.** Shall assess the persons who participated in its
 3 violation damages in the amount of not more than five hundred
 4 dollars ~~not~~ and not less than one hundred dollars. However, if
 5 a member of a government body knowingly participated in such a
 6 violation, damages shall be in the amount of not more than two
 7 thousand five hundred dollars and not less than one thousand
 8 dollars. These damages shall be paid by the court imposing
 9 them to the state of Iowa if the body in question is a state
 10 government body, or to the local government involved if the
 11 body in question is a local government body. A person found to
 12 have violated this chapter shall not be assessed such damages
 13 if that person proves that the person ~~either voted~~ did any of
 14 the following:

15 (1) Voted against the action violating this chapter,
 16 refused to participate in the action violating this chapter, or
 17 engaged in reasonable efforts under the circumstances to resist
 18 or prevent the action in violation of this chapter; ~~had.~~

19 (2) Had good reason to believe and in good faith believed
 20 facts which, if true, would have indicated compliance with the
 21 requirements of this chapter; ~~or reasonably.~~

22 (3) Reasonably relied upon a decision of a court ~~or an,~~
 23 a formal opinion of the Iowa public information board, the
 24 attorney general, or the attorney for the government body,
 25 given in writing, or as memorialized in the minutes of the
 26 meeting at which a formal oral opinion was given, or an
 27 advisory opinion of the Iowa public information board, the
 28 attorney general, or the attorney for the government body,
 29 given in writing.

30 Sec. 19. Section 22.10, subsection 3, paragraph d, Code
 31 2011, is amended to read as follows:

32 **d.** Shall issue an order removing a person from office if
 33 that person has engaged in a prior violation of this chapter
 34 for which damages were assessed against the person during the
 35 person's term. In making this determination, the court shall

1 recognize violations for which damages were assessed by the
2 Iowa public information board created in section 23.3.

3 Sec. 20. Section 22.10, subsection 5, Code 2011, is amended
4 by striking the subsection.

5 Sec. 21. Section 22.13, Code 2011, is amended to read as
6 follows:

7 **22.13 Settlements — ~~governmental~~ government bodies.**

8 1. A written summary of the terms of settlement, including
9 amounts of payments made to or through a claimant, or
10 other disposition of any claim for damages made against a
11 ~~governmental~~ government body or against an employee, officer,
12 or agent of a ~~governmental~~ government body, by an insurer
13 pursuant to a contract of liability insurance issued to
14 the ~~governmental~~ government body, shall be filed with the
15 ~~governmental~~ government body and shall be a public record.

16 2. A final binding settlement agreement between any
17 government body of this state or unit or official of such a
18 government body that resolves a legal dispute between such a
19 government body and another person or entity shall be filed
20 with the government body. For each such settlement agreement,
21 the government body shall prepare and file, together with
22 the settlement agreement, a brief summary indicating the
23 identity of the parties involved, the nature of the dispute,
24 any underlying relevant facts, and the terms of the settlement.
25 The settlement agreement and summary shall be available for
26 public inspection.

27 Sec. 22. Section 22.14, subsection 3, Code 2011, is amended
28 to read as follows:

29 3. If a fiduciary or other third party with custody of
30 public investment transactions records fails to produce public
31 records within a reasonable period of time as requested by
32 the ~~public~~ government body, the ~~public~~ government body shall
33 make no new investments with or through the fiduciary or other
34 third party and shall not renew existing investments upon their
35 maturity with or through the fiduciary or other third party.

1 The fiduciary or other third party shall be liable for the
2 penalties imposed under ~~section 22.6~~ statute, common law, or
3 contract due to the acts or omissions of the fiduciary or other
4 third party and ~~any other remedies available under statute,~~
5 ~~common law, or contract.~~

6 Sec. 23. NEW SECTION. 22.15 Judicial branch — rules.

7 This chapter does not apply to government records owned,
8 created, possessed, or under the control of the judicial branch
9 related to the performance by the courts of their judicial
10 functions. The supreme court shall prescribe rules governing
11 access to such records consistent with the purposes of this
12 chapter.

13 Sec. 24. NEW SECTION. 23.1 Citation and purpose.

14 This chapter may be cited as the "*Iowa Public Information*
15 *Board Act*". The purpose of this chapter is to provide
16 an alternative means by which to secure compliance with
17 and enforcement of the requirements of chapters 21 and 22
18 through the provision by the Iowa public information board
19 to all interested parties of an efficient, informal, and
20 cost-effective process for resolving disputes.

21 Sec. 25. NEW SECTION. 23.2 Definitions.

22 1. "*Board*" means the Iowa public information board created
23 in section 23.3.

24 2. "*Complainant*" means a person who files a complaint with
25 the board.

26 3. "*Complaint*" means a written and signed document filed
27 with the board alleging a violation of chapter 21 or 22.

28 4. "*Custodian*" means a government body, government official,
29 or government employee designated as the lawful custodian of a
30 government record pursuant to section 22.1.

31 5. "*Government body*" means the same as defined in section
32 22.1.

33 6. "*Person*" means an individual, partnership, association,
34 corporation, legal representative, trustee, receiver,
35 custodian, government body, or official, employee, agency, or

1 political subdivision of this state.

2 7. "*Respondent*" means any agency or other unit of state or
3 local government, custodian, government official, or government
4 employee who is the subject of a complaint.

5 Sec. 26. NEW SECTION. 23.3 **Board appointed.**

6 1. An Iowa public information board is created consisting of
7 five members appointed by the governor, subject to confirmation
8 by the senate. Membership shall be balanced as to political
9 affiliation as provided in section 69.16 and gender as provided
10 in section 69.16A. Members appointed to the board shall serve
11 staggered, four-year terms, beginning and ending as provided by
12 section 69.19. A quorum shall consist of three members.

13 2. A vacancy on the board shall be filled by the governor by
14 appointment for the unexpired part of the term. A board member
15 may be removed from office by the governor for good cause.
16 The board shall select one of its members to serve as chair
17 and shall employ a director who shall serve as the executive
18 officer of the board.

19 Sec. 27. NEW SECTION. 23.4 **Compensation and expenses.**

20 Board members shall be paid a per diem as specified in
21 section 7E.6 and shall be reimbursed for actual and necessary
22 expenses incurred while on official board business. Per diem
23 and expenses shall be paid from funds appropriated to the
24 board.

25 Sec. 28. NEW SECTION. 23.5 **Election of remedies.**

26 1. An aggrieved person, any taxpayer to or citizen of
27 this state, the attorney general, or any county attorney may
28 seek enforcement of the requirements of chapters 21 and 22 by
29 electing either to file an action pursuant to section 17A.19,
30 21.6, or 22.10, whichever is applicable, or in the alternative,
31 to file a timely complaint with the board.

32 2. If more than one person seeks enforcement of chapter 21
33 or 22 with respect to the same incident involving an alleged
34 violation, and one or more of such persons elects to do so by
35 filing an action under section 17A.19, 21.6, or 22.10, and one

1 or more of such persons elects to do so by filing a timely
 2 complaint with the board, the court in which the action is
 3 filed shall dismiss the action without prejudice, authorizing
 4 the complainant to file a complaint with respect to the same
 5 incident with the board without regard to the timeliness of
 6 the filing of the complaint at the time the action in court is
 7 dismissed.

8 3. If a person files an action pursuant to section 22.8
 9 seeking to enjoin the inspection of a public record, the
 10 respondent or person requesting access to the record which
 11 is the subject of the request for injunction may remove the
 12 proceeding to the board for its determination by filing, within
 13 thirty days of the commencement of the judicial proceeding, a
 14 complaint with the board alleging a violation of chapter 22 in
 15 regard to the same matter.

16 Sec. 29. NEW SECTION. **23.6 Board powers and duties.**

17 The board shall have all of the following powers and duties:

18 1. Employ such employees as are necessary to execute its
 19 authority, including administrative law judges, and attorneys
 20 to prosecute respondents in proceedings before the board
 21 and to represent the board in proceedings before a court.
 22 Notwithstanding section 8A.412, all of the board's employees,
 23 except for the executive director and attorneys, shall be
 24 employed subject to the merit system provisions of chapter 8A,
 25 subchapter IV.

26 2. Adopt rules with the force of law pursuant to chapter
 27 17A calculated to implement, enforce, and interpret the
 28 requirements of chapters 21 and 22 and to implement any
 29 authority delegated to the board by this chapter.

30 3. Issue, consistent with the requirements of section
 31 17A.9, declaratory orders with the force of law determining
 32 the applicability of chapter 21 or 22 to specified fact
 33 situations and issue informal advice to any person concerning
 34 the applicability of chapters 21 and 22.

35 4. Receive complaints alleging violations of chapter 21

1 or 22, seek resolution of such complaints through informal
2 assistance or through mediation and settlement, formally
3 investigate such complaints, decide after such an investigation
4 whether there is probable cause to believe a violation of
5 chapter 21 or 22 has occurred, and if probable cause has been
6 found prosecute the respondent before the board in a contested
7 case proceeding conducted according to the provisions of
8 chapter 17A.

9 5. Request and receive from a government body assistance
10 and information as necessary in the performance of its duties.
11 The board may examine a record of a government body that is
12 the subject matter of a complaint, including any record that
13 is confidential by law. Confidential records provided to
14 the board by a governmental body shall continue to maintain
15 their confidential status. Any member or employee of the
16 board is subject to the same policies and penalties regarding
17 the confidentiality of the document as an employee of the
18 government body.

19 6. Issue subpoenas enforceable in court for the purpose of
20 investigating complaints and to facilitate the prosecution and
21 conduct of contested cases before the board.

22 7. After appropriate board proceedings, issue orders
23 with the force of law, determining whether there has been
24 a violation of chapter 21 or 22, requiring compliance with
25 specified provisions of those chapters, imposing civil
26 penalties equivalent to and to the same extent as those damages
27 provided for in section 21.6 or 22.10, as applicable, on a
28 respondent who has been found in violation of chapter 21 or
29 22, and imposing any other appropriate remedies calculated
30 to declare, terminate, or remediate any violation of those
31 chapters.

32 8. Represent itself in judicial proceedings to enforce or
33 defend its orders and rules through attorneys on its own staff,
34 through the office of the attorney general, or through other
35 attorneys retained by the board, at its option.

1 9. Make training opportunities available to lawful
2 custodians, government bodies, and other persons subject to
3 the requirements of chapters 21 and 22 and require, in its
4 discretion, appropriate persons who have responsibilities in
5 relation to chapters 21 and 22 to receive periodic training
6 approved by the board.

7 10. Disseminate information calculated to inform members
8 of the public about the public's right to access government
9 information in this state including procedures to facilitate
10 this access and including information relating to the
11 obligations of government bodies under chapter 21 and lawful
12 custodians under chapter 22 and other laws dealing with this
13 subject.

14 11. Prepare and transmit to the governor and to the general
15 assembly, at least annually, reports describing complaints
16 received, board proceedings, investigations, hearings
17 conducted, decisions rendered, and other work performed by the
18 board.

19 12. Make recommendations to the general assembly proposing
20 legislation relating to public access to government information
21 deemed desirable by the board in light of the policy of
22 this state to provide as much public access as possible
23 to government information as is consistent with the public
24 interest and the need to protect individuals against undue
25 invasions of personal privacy.

26 Sec. 30. NEW SECTION. 23.7 Filing of complaints with the
27 board.

28 1. The board shall adopt rules with the force of law
29 and pursuant to chapter 17A providing for the timing, form,
30 content, and means by which any aggrieved person, any taxpayer
31 to or citizen of this state, the attorney general, or any
32 county attorney may file a complaint with the board alleging
33 a violation of chapter 21 or 22. The complaint must be filed
34 within sixty days from the time the alleged violation occurred
35 or the complainant could have become aware of the violation

1 with reasonable diligence. All complaints filed with the board
2 shall be public records.

3 2. All board proceedings in response to the filing of a
4 complaint shall be conducted as expeditiously as possible.

5 3. The board shall not charge a complainant any fee in
6 relation to the filing of a complaint, the processing of a
7 complaint, or any board proceeding or judicial proceeding
8 resulting from the filing of a complaint.

9 Sec. 31. NEW SECTION. 23.8 Initial processing of
10 complaint.

11 Upon receipt of a complaint alleging a violation of chapter
12 21 or 22, the board shall do either of the following:

13 1. Determine that, on its face, the complaint is within
14 the board's jurisdiction, appears legally sufficient, and
15 could have merit. In such a case the board shall accept
16 the complaint, and shall notify the parties of that fact in
17 writing.

18 2. Determine that, on its face, the complaint is outside
19 its jurisdiction, is legally insufficient, is frivolous,
20 is without merit, involves harmless error, or relates to a
21 specific incident that has previously been finally disposed of
22 on its merits by the board or a court. In such a case the board
23 shall decline to accept the complaint. If the board refuses
24 to accept a complaint, the board shall provide the complainant
25 with a written order explaining its reasons for the action.

26 Sec. 32. NEW SECTION. 23.9 Informal assistance — mediation
27 and settlement.

28 1. After accepting a complaint, the board shall promptly
29 work with the parties through its employees to reach an
30 informal, expeditious resolution of the complaint. If an
31 informal resolution satisfactory to the parties cannot be
32 reached, the board or the board's designee shall offer the
33 parties an opportunity to resolve the dispute through mediation
34 and settlement.

35 2. The mediation and settlement process shall enable the

1 complainant to attempt to resolve the dispute with the aid of
2 a neutral mediator employed and selected by the board, in its
3 discretion, from either its own staff or an outside source.

4 3. Mediation shall be conducted as an informal,
5 nonadversarial process and in a manner calculated to help
6 the parties reach a mutually acceptable and voluntary
7 settlement agreement. The mediator shall assist the parties in
8 identifying issues and shall foster joint problem solving and
9 the exploration of settlement alternatives.

10 Sec. 33. NEW SECTION. 23.10 Enforcement.

11 1. If any party declines mediation or settlement or if
12 mediation or settlement fails to resolve the matter to the
13 satisfaction of all parties, the board shall initiate a formal
14 investigation concerning the facts and circumstances set forth
15 in the complaint. The board shall, after an appropriate
16 investigation, make a determination as to whether the complaint
17 is within the board's jurisdiction and whether there is
18 probable cause to believe that the facts and circumstances
19 alleged in the complaint constitute a violation of chapter 21
20 or 22.

21 2. If the board finds the complaint is outside the board's
22 jurisdiction or there is no probable cause to believe there
23 has been a violation of chapter 21 or 22, the board shall
24 issue a written order explaining the reasons for the board's
25 conclusions and dismissing the complaint, and shall transmit
26 a copy to the complainant and to the party against whom the
27 complaint was filed.

28 3. a. If the board finds the complaint is within the
29 board's jurisdiction and there is probable cause to believe
30 there has been a violation of chapter 21 or 22, the board
31 shall issue a written order to that effect and shall commence
32 a contested case proceeding under chapter 17A against
33 the respondent. An attorney selected by the director of
34 the board shall prosecute the respondent in the contested
35 case proceeding. At the termination of the contested case

1 proceeding the board shall, by a majority vote of its members,
2 render a final decision as to the merits of the complaint. If
3 the board finds that the complaint has merit, the board may
4 issue any appropriate order to ensure enforcement of chapter 21
5 or 22 including but not limited to an order requiring specified
6 action or prohibiting specified action and any appropriate
7 order to remedy any failure of the respondent to observe any
8 provision of those chapters.

9 *b.* If the board determines, by a majority vote of its
10 members, that the respondent has violated chapter 21 or 22, the
11 board may also do any or all of the following:

12 (1) Require the respondent to pay damages as provided for
13 in section 21.6 or 22.10, whichever is applicable, to the
14 extent that provision would make such damages payable if the
15 complainant had sought to enforce a violation in court instead
16 of through the board.

17 (2) Void any action taken in violation of chapter 21 if a
18 court would be authorized to do so in similar circumstances
19 pursuant to section 21.6.

20 *c.* The board shall not have the authority to remove a person
21 from public office for a violation of chapter 21 or 22. The
22 board may file an action under chapter 21 or 22 to remove a
23 person from office for violations that would subject a person
24 to removal under those chapters.

25 *d.* A final board order resulting from such proceedings may
26 be enforced by the board in court and is subject to judicial
27 review pursuant to section 17A.19.

28 Sec. 34. NEW SECTION. 23.11 **Defenses in a contested case**
29 **proceeding.**

30 A respondent may defend against a proceeding before the
31 board charging a violation of chapter 21 or 22 on the grounds
32 that if such a violation occurred it was only harmless error or
33 that clear and convincing evidence demonstrated that grounds
34 existed to justify a court to issue an injunction against
35 disclosure pursuant to section 22.8.

1 Sec. 35. NEW SECTION. 23.12 Jurisdiction.

2 The board shall not have jurisdiction over the judicial
3 or legislative branches of state government or any entity,
4 officer, or employee of those branches, or over the governor
5 or the office of the governor.

6 Sec. 36. Section 455K.4, subsection 4, Code 2011, is amended
7 to read as follows:

8 4. Information that is disclosed under subsection 2,
9 paragraph "b", is confidential and is not subject to disclosure
10 under chapter 22. ~~A governmental entity, governmental~~
11 ~~employee, or governmental official who discloses information in~~
12 ~~violation of this subsection is subject to the penalty provided~~
13 ~~in section 22.6.~~

14 Sec. 37. REPEAL. Section 22.6, Code 2011, is repealed.

15 EXPLANATION

16 This bill relates to Iowa's Open Meetings Law (Code chapter
17 21) and Iowa's Open Records Law (Code chapter 22) and creates
18 the Iowa public information board.

19 MEETINGS. The bill provides that except as otherwise
20 provided, a reconvened meeting of a governmental body is also
21 subject to the meeting notice requirements pursuant to Code
22 section 21.4. This requirement does not apply to a meeting of
23 a governmental body that is reconvened within four hours of the
24 start of its recess, where an announcement of the time, date,
25 and place of the reconvened meeting is made at the original
26 meeting in open session and recorded in the minutes of the
27 meeting and there is no change in the agenda. The notice
28 requirement also does not apply to a meeting held by a formally
29 constituted subunit of a parent governmental body during a
30 lawful meeting of the parent governmental body or during a
31 recess in that meeting of up to four hours, or a meeting of
32 that subunit immediately following the meeting of the parent
33 governmental body, if the meeting of the subunit is publicly
34 announced in open session at the parent meeting and the subject
35 of the meeting reasonably coincides with the subjects discussed

1 or acted upon by the parent governmental body. The bill also
2 changes all references relating to "tape" recordings of closed
3 meetings to "audio" recordings.

4 CIVIL AND CRIMINAL PENALTY PROVISIONS. The bill increases
5 the civil penalty damage amounts for violations of the open
6 meetings and public records laws for each member of the
7 governmental body or each person who knowingly participated in
8 the violation from not less than \$100 and not more than \$500 to
9 not less than \$1,000 and not more than \$2,500 subject to the
10 existing defenses contained in Code sections 21.6 and 22.10.
11 The bill retains the current civil penalty damage amounts for
12 such violations for each member of the governmental body or
13 each person who participated in the violation (\$100 to \$500).
14 The bill repeals the criminal penalty provision for knowing
15 violations or attempts to violate any provisions of the public
16 records law.

17 OPEN RECORDS — CHAPTER PURPOSE. The bill provides a purpose
18 provision in the open records chapter. The bill provides that
19 the purpose of the open records law is to provide as much
20 transparency in government operations as possible consistent
21 with the need to avoid undue invasions of personal privacy.

22 RECORDS REQUESTS — TIME LIMITS. The bill provides that
23 upon receipt of an oral or written request to examine or copy
24 a public record, the lawful custodian shall, if feasible in
25 the ordinary course of business, permit such examination or
26 copying at the time of the request. If it is not feasible
27 in the ordinary course of business to permit examination or
28 copying of the public record at the time of the request, the
29 lawful custodian shall immediately notify the requester, orally
30 or in writing, when such examination or copying may take place
31 which shall be no later than five business days from the time
32 of the request unless there is good cause for further delay.
33 If further delay is necessary because of good cause, the lawful
34 custodian shall provide the requester with a written statement
35 detailing the reason or reasons for the delay and the date by

1 which the request will be satisfied. If the lawful custodian
2 is in doubt as to whether the record requested is a public
3 record or whether the requester should be permitted to examine
4 or copy a record specified in Code section 22.7, the lawful
5 custodian shall make that determination within 10 business days
6 from the date of the request unless further delay is necessary.
7 Examination or copying of the record shall be allowed within
8 five business days from the date the lawful custodian makes
9 the decision to permit examination or copying of the record
10 unless there is good cause for further delay in fulfilling the
11 request. If the lawful custodian denies a request to examine
12 or copy a record, the custodian must provide the requester at
13 the time of the denial a written statement denying the request
14 and detailing the specific reason or reasons for the denial.
15 If the lawful custodian does not fulfill a request to examine
16 or copy a public record within the time frames prescribed,
17 the request shall be deemed denied and the requester shall be
18 entitled to file a complaint with the Iowa public information
19 board created in Code section 23.7 or may file a lawsuit
20 against the lawful custodian pursuant to Code section 22.10.

21 APPRAISAL INFORMATION. Current law provides that appraisal
22 or appraisal information concerning the purchase of real
23 or personal property for public purposes, prior to public
24 announcement of a project, shall be confidential. The bill
25 amends this law to provide that such information shall remain
26 confidential prior to the submission of the appraisal to the
27 property owner or other interest holders as provided in Code
28 section 6B.45.

29 PERSONAL INFORMATION IN CONFIDENTIAL PERSONNEL RECORDS.
30 Current law provides that personal information in confidential
31 personnel records of government bodies shall be confidential,
32 unless otherwise ordered by a court, by the lawful custodian,
33 or by another duly authorized person to release such
34 information. The bill specifies that the name and compensation
35 of the individual, the date the individual was employed by the

1 government body, the positions the individual holds or has held
2 with the government body, the individual's qualifications for
3 the position that the individual holds or has held including
4 but not limited to educational background and work experience,
5 and any final disciplinary action taken against the individual
6 that resulted in the individual's discharge shall be public
7 records.

8 PUBLIC EMPLOYMENT APPLICATIONS. The bill provides that
9 identity and qualifications of an applicant for employment by a
10 government body if the applicant requests anonymity in writing
11 and the government body determines that anonymity is necessary
12 to induce the applicant to apply for the public employment
13 position shall be confidential unless otherwise ordered by a
14 court, by the lawful custodian, or by another duly authorized
15 person. Such information shall be exempt from disclosure
16 until an applicant is considered by the government body to be
17 a finalist for a position in public employment. "Finalist"
18 means a person who is one of five or fewer applicants under
19 final consideration for a public employment position. If there
20 are five or fewer applicants for the particular position,
21 all of the applicants shall be considered finalists. The
22 identities and qualifications of the finalists shall be made
23 available for public inspection at least three business days
24 prior to the final employment decision. Documents relating
25 to a government body's evaluation of the qualifications and
26 merits of an applicant for employment by a government body are
27 also confidential records unless otherwise released by the
28 appropriate person.

29 SETTLEMENT AGREEMENTS. Code chapter 22 currently provides
30 that a written summary of the terms of settlement or other
31 disposition of any claim for damages made against any
32 government body or against an employee, officer, or agent of
33 a government body, by an insurer pursuant to a contract of
34 liability insurance issued to the government body, shall be
35 filed with the government body and shall be a public record.

1 The bill provides that all final binding settlement agreements
2 between any government body of this state or other unit or
3 official of such a government body that resolves a legal
4 dispute between such a government body and another person or
5 entity shall be filed with the government body together with a
6 brief summary indicating the identity of the parties involved,
7 the nature of the dispute, any underlying relevant facts, and
8 the terms of the settlement. The settlement agreement and
9 summary shall be available for public inspection.

10 JUDICIAL BRANCH — RULES. The bill provides that Code
11 chapter 22 does not apply to government records owned, created,
12 possessed, or under the control of the judicial branch related
13 to the performance by the courts of their judicial functions.
14 The bill provides that the supreme court shall prescribe rules
15 governing access to such records consistent with the purposes
16 of Code chapter 22.

17 IOWA PUBLIC INFORMATION BOARD. The bill creates the Iowa
18 public information board to provide an alternative means
19 by which to secure compliance with and enforcement of the
20 requirements of Code chapters 21 and 22, to consist of five
21 members appointed by the governor, subject to confirmation by
22 the senate, to serve four-year staggered terms. The board
23 shall be balanced as to political affiliation and gender.
24 Vacancies on the board shall be filled by the governor by
25 appointment for the unexpired part of the term of the vacancy.
26 Any board member may be removed from office by the governor
27 for good cause. The board shall select one of its members to
28 serve as chair and shall hire a director who shall serve as the
29 executive officer of the board. Board members shall be paid
30 a per diem and shall be reimbursed for actual and necessary
31 expenses incurred while on official board business. All per
32 diem and expense moneys paid to board members shall be paid
33 from funds appropriated to the board. The board shall not
34 have jurisdiction over the judicial or legislative branches of
35 state government or any entity, officer, or employee of those

1 branches, or over the governor or the office of the governor,
2 but the bill does not alter the current applicability of Code
3 chapter 22 and the enforcement mechanisms provided in Code
4 chapter 22 to the office of the governor.

5 The bill provides that any aggrieved person, any taxpayer to
6 or citizen of the state of Iowa, the attorney general, or any
7 county attorney, may seek enforcement of the requirements of
8 Code chapters 21 and 22 by electing either to file an action
9 pursuant to Code section 17A.19, 21.6, or 22.9, whichever is
10 applicable, or in the alternative, to file a timely complaint
11 with the board. If more than one person seeks enforcement
12 of Code chapter 21 or 22 with respect to the same incident
13 involving an alleged violation, and one or more of such persons
14 elects to do so by filing an action under Code section 17A.19,
15 21.6, or 22.9, and one or more of such persons elects to do
16 so by filing a timely complaint with the board, the court in
17 which the action was filed shall dismiss the action without
18 prejudice authorizing the complainant to file a complaint
19 with respect to that same incident with the board without
20 regard to the timeliness of the filing of that complaint at
21 the time the action in court is dismissed. If a person files
22 an action seeking to enjoin the inspection of a public record,
23 the respondent or person requesting access to the record which
24 is the subject of the request for injunction, may remove the
25 proceeding to the board for its determination by filing, within
26 30 days of the commencement of that judicial proceeding, a
27 complaint with the board alleging a violation of Code chapter
28 22 in regard to the same matter.

29 The bill provides that the board shall have the authority
30 to employ such employees as are necessary to execute its
31 authority, adopt rules with the force of law, interpret
32 the requirements of Code chapters 21 and 22, implement any
33 authority delegated to the board, issue declaratory orders
34 with the force of law, issue informal advice to anyone
35 concerning the applicability of Code chapters 21 and 22,

1 receive complaints alleging violations of Code chapter 21
2 or 22, seek resolution of such complaints through mediation
3 and settlement, formally investigate such complaints, decide
4 after such an investigation whether there is probable cause
5 to believe a violation of Code chapter 21 or 22 has occurred,
6 and if probable cause has been found, prosecute the respondent
7 before the board in a contested case proceeding conducted
8 according to the provisions of Code chapter 17A. The board
9 shall also have the authority to issue subpoenas enforceable in
10 court, issue orders with the force of law, represent itself in
11 judicial proceedings, make training opportunities available,
12 disseminate information to inform the public about the public's
13 right to access government information, prepare and transmit
14 reports to the governor and the general assembly, at least
15 annually, describing complaints received, board proceedings,
16 investigations, hearings conducted, decisions rendered, and
17 other work performed by the board, and make recommendations to
18 the general assembly concerning legislation relating to public
19 information access.

20 The bill provides that a complaint must be filed within
21 60 days from the time the alleged violation occurred or
22 the complainant could have become aware of the violation
23 with reasonable diligence. All complaints filed with the
24 board shall be public records. The board shall not charge a
25 complainant any fee in relation to the filing of a complaint,
26 the processing of a complaint, or any board proceeding or
27 judicial proceeding resulting from the filing of a complaint.

28 The bill provides that upon receipt of a complaint, the
29 board shall either make a determination that, on its face, the
30 complaint is within the board's jurisdiction, appears legally
31 sufficient, and could have merit, in which case the board shall
32 accept the complaint, or make a determination that, on its
33 face, the complaint is outside the board's jurisdiction, is
34 legally insufficient, is frivolous, is without merit, involves
35 harmless error, or relates to a specific incident that has

1 previously been finally disposed of on its merits by the board
2 or a court, in which case the board shall decline to accept the
3 complaint. If the board declines to accept the complaint, the
4 board shall provide the complainant with a written statement
5 detailing the reasons for the denial.

6 After accepting a complaint, and upon the board's
7 determination that the matter is unlikely to be resolved with
8 the prompt informal assistance of a board employee, the board
9 shall offer the parties the opportunity to resolve the dispute
10 through mediation and settlement which shall provide the
11 complainant the opportunity to resolve the dispute with the aid
12 of a neutral mediator employed and selected by the board.

13 If any party declines mediation or settlement or if
14 mediation or settlement fails to resolve the matter to the
15 satisfaction of all parties, the board shall initiate a formal
16 investigation concerning the facts and circumstances set forth
17 in the complaint. After investigation, the board shall make
18 a determination as to whether the complaint is within the
19 board's jurisdiction and whether there is probable cause to
20 believe that the complaint states a violation of Code chapter
21 21 or 22 and if the board finds the complaint is outside the
22 board's jurisdiction or there is not probable cause to believe
23 there has been a violation, the board shall issue a written
24 order explaining the reasons for the board's conclusions and
25 dismissing the complaint. If the board finds the complaint is
26 within the board's jurisdiction and there is probable cause
27 to believe there has been a violation, the board shall issue
28 a written order to that effect and shall commence a contested
29 case proceeding against the respondent. An attorney selected
30 by the director of the board shall prosecute the respondent
31 in the contested case proceeding. At the termination of the
32 contested case proceeding the board shall, by a majority vote
33 of its members, render a final decision as to the merits of the
34 complaint and issue any appropriate order to ensure enforcement
35 of Code chapter 21 or 22 or to remedy any failure of the

1 respondent to observe any provision of those Code chapters. If
2 the board determines, by a majority vote of its members, that
3 the respondent has violated Code chapter 21 or 22, the board
4 may also require the respondent to pay damages if such damages
5 would be warranted under either Code chapter and may void
6 any action taken in violation of Code chapter 21. The board
7 does not have the authority to remove a person from public
8 office for a violation of Code chapter 21 or 22 but may file
9 an action under either Code chapter to remove a person from
10 office for violations that would subject a person to removal
11 under those Code chapters. A final board order resulting from
12 such proceedings may be enforced by the board in court and is
13 subject to judicial review pursuant to Code section 17A.19.